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Situation of human rights in Myanmar

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, in accordance with Assembly resolution 68/242.

* Late submission.

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Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee

Summary

The important transition and far-reaching reforms in Myanmar must be commended. Yet, possible signs of backtracking should be addressed so as not to undermine the progress achieved. The present report sets out the Special Rapporteur's preliminary key areas of focus and recommendations aimed at contributing to Myanmar's efforts towards respecting, protecting and promoting human rights and achieving democratization, national reconciliation and development.

I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established pursuant to Commission on Human Rights resolution 1992/58 and recently extended by Human Rights Council resolution 25/26. The present report is submitted pursuant to Council resolution 25/26 and General Assembly resolution 68/242.

II. Background

2. Following the completion of the term of the previous mandate holder, the current mandate holder took up her functions only in June 2014, which resulted in a shorter period than usual to conduct a country visit and review the information gathered. The present report therefore sets out the Special Rapporteur's preliminary observations, to be supplemented by her oral statement to the General Assembly.

3. On 16 June, the Special Rapporteur met with the Permanent Representative of Myanmar to the United Nations in Geneva, and subsequently with representatives of other Member States and United Nations entities in Geneva.

4. From 17 to 26 July, the Special Rapporteur conducted her first mission to Myanmar; she expresses her appreciation to the Government for its cooperation during the 10-day visit.[1] She held meetings in Nay Pyi Taw and Yangon, and visited Mandalay as well as Rakhine and Kachin States. She visited Insein, Sittwe, Bhamo and Myitkina prisons, where she met political prisoners. She also held meetings in Bangkok, including with representatives of the Ministry of Foreign Affairs of Thailand.

5. The Special Rapporteur sent joint communications in June and in August.[2]

III. Proposed methodology of work and approach to mandate

6. The Special Rapporteur recognizes the significance of Myanmar's reform process and considers it vital to engage with different branches of government at all levels, legislative bodies and the judiciary to better appreciate the realities on the ground. Similarly, she believes it important to engage with community and religious leaders, representatives of civil society and victims of human rights violations. Her observations and recommendations are focused on how to ensure greater respect for international human rights principles and standards in Myanmar.

7. The Special Rapporteur will continue dialogue with the international community, which should remain engaged and continue to support Myanmar in its reform process, and in fulfilling its international human rights obligations. In fulfilling her mandate, she hopes to undertake visits to neighbouring countries.

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[1] For the list of meetings and locations visited, see the Special Rapporteur's end of mission press statement: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14909LangID=E.

[2] To be published in communications reports of special procedures covering the period from June to November 2014.

8. She intends to collaborate with other thematic special procedures mandate holders and believes that the Government would benefit from closer engagement with them.

9. Myanmar will undergo the second cycle of the universal periodic review in October and November 2015. The Special Rapporteur will follow this process and encourages the implementation of accepted recommendations from the first universal periodic review cycle in 2011. She will also follow the upcoming review of Myanmar under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

IV. Preliminary key areas of focus

10. The Special Rapporteur's preliminary key areas of focus, as guided by the resolutions of the Human Rights Council and the General Assembly, and based on her country visit and additional research, are set out below.

A. Electoral process, political participation and democratic space

11. The environment for and the actual conduct of elections in 2015 will be an important benchmark in Myanmar's continuing democratic transition. In accordance with international standards, elections should be transparent, inclusive, participatory, free and fair. It is therefore important that Myanmar draw lessons from the 2010 general elections and continue to make improvements in the electoral process. The electoral legal framework, its implementation by the Union Election Commission and other relevant authorities, and the process leading up to the elections (including with respect to election campaigning and voter education and participation) should be monitored closely and assessed against international standards.

12. According to article 391 of the Constitution of 2008, persons eligible to vote are citizens who are at least 18 years old when the election commences and not disqualified by law; those disqualified include members of religious orders; persons serving prison terms; persons determined to be of unsound mind and so declared by a competent Court; persons who have not yet been declared free from insolvency; and persons disqualified by election law. The Constitution also provides voting rights to those granted that right under the law. For example, the Amyotha Hluttaw Election Law of 2010 provides, among other things, that a citizen, including an associate and a naturalized citizen, as well as a holder of a temporary certificate who has reached the age of 18 years, shall be eligible to vote.[3] This is notable, given that international law permits the right to vote and to stand for election to be limited to citizens (which should be subject only to reasonable restrictions).[4] The Constitution and election laws go beyond this permissible restriction to enable non-citizens to vote under the law.[5] A distinction is, however, made between an

[3] Sect. 6 (a); see also sect. 6 (a) of the Pyithu Hluttaw Election Law.

[4] Art. 25 of the International Covenant on Civil and Political Rights; Human Rights Committee, general comment No. 25 (CCPR/C/21/Rev.1/Add.7).

[5] The Constitution nonetheless reserves most human rights only for citizens (see sect. D below).

associate and a naturalized citizen, as compared with a "full" citizen.[6] The Committee on the Rights of the Child has previously recommended the abrogation of the legal provisions setting out the three different categories of citizenship under the Citizenship Law of 1982.[7] It is also possible to revoke an associate or naturalized citizenship on the basis of vague and broad grounds — such as showing "disaffection or disloyalty to the State by any act or speech or otherwise"[8] — thereby eliminating the right to vote and increasing vulnerability to being stateless.[9] This suggests a lower class of citizenship for associate and naturalized citizens.

13. To stand for elections in the Lower House, article 120 of the Constitution requires that candidates be at least 25 years old; be a citizen born of both parents who are citizens; have resided in Myanmar for at least 10 consecutive years up to the time of the election (although time spent away with government permission is accepted as in-country residence); and be qualified under the relevant election law. The same provisions apply for elections in the Upper House, with the exception that the minimum age of candidates is 30 years. Article 121 provides a long list of criteria for the disqualification of candidates, which include vague provisions that may be interpreted broadly to deny one's right to stand for elections — in contravention of international norms.[10] Additionally, both associate and naturalized citizens are disqualified from standing for elections in both houses.[11] Article 59 of the Constitution sets out the qualifications for the President and Vice-Presidents, including the nationality and birthplace of their parents; the length of their period of residence prior to the election; and the nationality of their spouse, their children and the spouses of their children. International standards hold that the right to be elected may be limited only on the basis of objective and reasonable criteria, for instance, minimum age and mental incapacity. Disqualifications should not be based on unreasonable or discriminatory requirements such as education, residence or descent, or on political affiliation.[12]

14. The Political Parties Registration Law of 2010 allows temporary certificate holders to form and become members of political parties in addition to citizens, associate citizens and naturalized citizens.[13] Under international law, non-citizens can be members of political parties. However, in March 2014 the Amyotha Hluttaw reportedly passed a constitutional amendment "removing the right of temporary citizenship card holders to form political parties".[14] There are indications of

[6] Article 345 of the Constitution states that a citizen is one who is already a citizen when the Constitution comes into effect or one who is born to parents who are both citizens. The overriding international norm governing citizenship, however, is place of birth (jus soli). The other accepted criterion for acquisition of nationality is through descent (jus sanguinis) i.e., citizenship acquired from one parent, rather than both.

[7] CRC/C/MMR/CO/3-4, paras. 41 and 42.

[8] Sects. 35 (d) and 58 (d) of the Citizenship Law of 1982.

[9] It is noted further, for example, that the combination of sects. 29 and 31, and 51 and 54 of the 1982 Law could also render children of associate and naturalized citizens particularly vulnerable to being stateless.

[10] See, for example, art. 121 (g) and (h).

[11] See sect. 10 (m) of the Amyotha Hluttaw Election Law and sect. 10 (m) of the Pyithu Hluttaw Election Law.

[12] Human Rights Committee general comment No. 25, paras. 4, 15 and 17.

[13] Sects. 4 (a) and 10 (a).

[14] Art. 22 of the International Covenant on Civil and Political Rights; also see A/57/18, para. 359, and A/58/40 (vol. I), para. 79 (17).

possible further steps to remove the voting rights of those with temporary citizenship.[15]

15. On 1 July 2014, the Union Election Commission issued a directive on new campaigning rules for the 2015 elections after consultation with political parties. The rules state that political parties can commence campaigning 30 days before the elections and are not allowed to canvass on the day before. Candidates are expected to apply for approval regarding all campaign activities. Reportedly, in order to give a speech or hold a rally, candidates must apply to the local election commission office within 15 days of being officially registered. Applications to hold rallies must include details such as the place, date, time and duration of the event, the planned speakers, information about the applicant and whether any vehicles will be used.[16] The rules were criticized by some as being too burdensome and restrictive, and the Election Commission reportedly recently agreed to some changes, including a two-month campaigning period.[17]

16. Enhancing women's political participation will be crucial for the electoral process, given women's severe underrepresentation in Government and Parliament. There is limited public awareness and understanding of women's important roles in the public and political sphere, particularly in the reform process. As a party to the Convention on the Elimination of All Forms of Discrimination against Women, Myanmar should do more to promote women's participation in public and political life and to eliminate discrimination and gender stereotypes.

17. According to the Human Rights Committee, freedom of expression, assembly and association are essential for the effective exercise of the right to vote and must be fully protected.[18] Persons entitled to vote must be able to do so freely without undue influence or coercion of any kind, and they should be able to form opinions independently, "free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind".[19] Thus, there should be strict and clear safeguards to prevent undue interference in public freedoms. According to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, genuine elections cannot be achieved if these rights are curtailed (see A/68/299, para. 56).

18. The Special Rapporteur is therefore concerned at reports of the continued application of outdated legislation, such as the State Secrets Act of 1923 or the Emergency Provisions Act of 1950, as well as other legislation such as the Peaceful Assembly and Peaceful Procession Act, to criminalize and impede the activities of civil society and the media. She notes that this has increased the number of political prisoners and that sentences imposed are disproportionately high.

19. During her mission, the Special Rapporteur was informed about the arrests and trials of journalists who had reported on issues deemed too sensitive or critical of those in power, such as government corruption. She was also told of the threats and intimidation faced by journalists, including in trying to report on the recent violence

[15] *The Irrawaddy*, "Upper House approves ban on politics for non-citizens", 20 March 2014.
[16] *The Irrawaddy*, "Burma's Election Commission approves campaign rules", 14 July 2014.
[17] *Democratic Voice of Burma (DVB)*, "Election Commission backtracks on new campaign rules", 2 August 2014.
[18] Human Rights Committee general comment No. 25, paras. 12 and 19.
[19] Ibid., para. 19.

in Mandalay, and of a climate of uncertainty, intimidation and fear of arrest resulting in a form of self-censorship.

20. The Special Rapporteur has already publicly expressed concern regarding the sentencing of four journalists and an editor of *Unity Journal* to 10 years' imprisonment with hard labour under the State Secrets Act of 1923 (they had reported on the alleged existence of a chemical weapons factory), and the charges brought under section 18 of the Peaceful Assembly and Peaceful Procession Act against 50 journalists who had staged a silent protest against the verdict. The Government responded that the journalists had not been charged "because of reporting, but because of trespassing [in a] restricted area". Reportedly, the verdict is being appealed, although a date for the appeal hearing has not been set and the case filed against the 50 journalists has been dropped. The Special Rapporteur is also following developments regarding the trial of editors and staff of the *Bi Mon Te Nay Journal* who were originally charged under the Emergency Provisions Act of 1950 (but now apparently face lesser charges under sect. 505 (b) of the Penal Code) for a report citing an activist group's claim that Daw Aung San Suu Kyi and ethnic minority leaders had formed a new interim government.

21. These developments are troubling, given that increased freedom of expression, in particular media freedom, had widely been hailed as a key achievement of the reform process. In his radio address of 7 July, President Thein Sein proclaimed Myanmar one of the countries with the greatest media freedom in South-East Asia. Yet, he also warned that "if there is any media that exploits media freedom and causes harm to national security rather than reporting for the sake of the country, effective legal action will be taken against that media".

22. The Special Rapporteur is therefore encouraged by a reported meeting between the President and the Interim Press Council in August, at which it was apparently agreed that the Council would mediate disputes between journalists and the authorities. She welcomes the President's support for the resolution of disputes through the Council instead of legal action as the appropriate action in line with international standards.

23. During her mission, the Special Rapporteur received a copy of the News Media Law of 2014. Notably, it does not provide for custodial penalties for breaching media standards (although other laws can still be used to that end). It guarantees the right of media workers to criticize all branches of government and to obtain information. It also provides that publications should be free from censorship. However, there is no explicit provision recognizing the right to freedom of expression.[20]

24. The Special Rapporteur was also informed about the arrests and prosecution of people exercising their rights to freedom of peaceful assembly and association, particularly under section 18 of the Peaceful Assembly and Peaceful Procession Act. A disturbing example is the conviction of Chin activists who protested against an alleged rape of a woman by a military soldier in Chin State.

25. Civil society actors campaigning on land and environmental issues, or assisting communities affected by development projects, are reportedly often harassed and arrested (including under the Peaceful Assembly and Peaceful

[20] Article 19, "Myanmar: News Media Law", 8 July 2014.

Procession Act). During her mission, the Special Rapporteur met with U Sein Than, who had been arrested multiple times and was under trial in multiple township courts for protesting against land-grabbing and forced evictions. She is concerned that he was subsequently arrested again (and charged under sect. 18 of the Peaceful Assembly and Peaceful Procession Act) while reportedly making his way to the United Nations office to provide more information on his work. He was recently sentenced by two courts to a total of eight months in prison.[21] She is also following developments regarding farmers who had staged a "plough protest" on farmland allegedly confiscated by the military in Sagaing Division. Fifty-seven farmers were reportedly sentenced to between three months and three years in prison for trespassing and causing damage or loss of land, while a further 173 farmers await sentencing.

26. While there is some evidence of the police and authorities showing a more considered response to public demonstrations, there are continuing reports of the excessive use of force in breaking up protests. Such patterns of harassment and State force not only undermine the work of civil society, but also send an intimidating message to society at large. It is vital that the Government create a safe and enabling environment for civil society, given their central role in democratization, national reconciliation, development and the promotion and protection of human rights. Thus, any administrative and legislative provisions that impede their legitimate and peaceful activities should be abolished. Complaints of violations against civil society actors should be investigated, and those found responsible for violations should be brought to justice. There must be ways for the authorities to break through the cycle of control and suppression through a change of legislation, policies and practices, and through better understanding, negotiation and communication. This will in turn enable the authorities and civil society to work constructively together to address the challenges before Myanmar.

27. The bill amending the Right to Peaceful Assembly and Peaceful Procession Act of 2011 was adopted by Parliament on 18 June and signed by the President on 24 June 2014.[22] Previously, one could be sentenced to up to one year in prison and fined a maximum of 30,000 kyats under section 18 of the law for holding a peaceful assembly without permission. With the amendment, section 18 remains; however, the maximum prison sentence is now reduced by half. There is still a requirement to apply five days in advance, although merely for "consent" instead of for "permission" to exercise the right to freedom of peaceful assembly and peaceful procession. In this respect, the Special Rapporteur was informed that such consent would be issued as a matter of course unless the application had not been "submitted in accordance to the rules for consent". She notes that 85 out of 86 applications were approved between 24 June to 31 July, with one application dismissed for being incomplete. Yet, she notes that the information to be provided in the application is unduly burdensome and detailed, such as listing the chants that will be used and the approximate number of participants, with the consequent consent given being unduly restrictive, prescribing the exact parameters for holding the assembly based on the details provided. Additionally, the amended law retains a de facto authorization regime with no right of appeal if consent is not given. The Special Rapporteur thus echoes the views of the Special Rapporteur on the rights to freedom

[21] See www.irrawaddy.org/burma/rangoon-land-protest-leader-gets-8-months-prison.html.

[22] See *DVB*, "Peaceful assembly bill passed, now awaits president's signature", 19 June 2014; Article 19, "Myanmar disappointment surrounds amendment to assembly law", 27 June 2014.

of peaceful assembly and of association that the exercise of the right to freedom of peaceful assembly should not be subject to authorization by the authorities and that a prior notification should be sufficient, particularly if measures are needed to, for example, protect public safety and order. Furthermore, spontaneous assemblies should be recognized in law and exempted from prior notification (see A/HRC/20/27, paras. 28 and 29).

28. In addition, the rules for participation in a peaceful assembly and/or procession under section 8 (e) and chapter 5 of the law were not amended. They are arguably broad enough for participants to be arrested and prosecuted on various grounds. Also, the right to freedom of peaceful assembly and peaceful procession is accorded only to citizens, rather than to everyone as required under international law.

29. The Special Rapporteur notes that the draft law relating to registration of organizations is due to be adopted by Parliament. In the light of the concerns surrounding this bill, she recommends that it be further revised in line with international human rights standards before its adoption into legislation.

B. National reconciliation and the rights of minorities

30. As Myanmar is one of the most diverse countries in the world, with more than 130 ethnic groups, the Special Rapporteur believes that ensuring full respect for the rights of minorities will be essential for national reconciliation and democratic transition. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires States to ensure that persons belonging to minorities fully and effectively exercise all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

31. The Constitution of 2008 entitles the representatives of "national races with suitable population" to participate in the regional and state legislature "mainly, to undertake their national races affairs". The State is obliged to develop, among other things, the language and culture of the national races; promote solidarity and respect among the national races; and promote socioeconomic development of less developed national races.[23] These issues will be critical for any process of national reconciliation to be successful and durable.

32. During her mission, the Special Rapporteur was informed about developments regarding a nationwide ceasefire agreement and the commencement of a political dialogue with various ethnic groups. She notes that ceasefire agreements have been signed between the Government and 14 ethnic armed groups (with the exceptions of the Kachin Independence Army (KIA) and the Ta'ang (Palaung) National Liberation Army). Several informal and formal meetings between the National Ceasefire Coordination Team of 16 ethnic armed groups and the Government Union Peace Working Committee have been held since the Coordination Team was formed in November 2013, which have resulted in two drafts of a nationwide ceasefire agreement. Many in the Government hope that the final text will be signed soon, although several complex issues remain pending, including the question of

[23] Arts. 3, 15, 17 (c) and 22.

federalism. Many ethnic groups appear sceptical of this process and remain distrustful of the Government.

33. The Special Rapporteur therefore believes that abiding by the human rights principles of participation, transparency, justice, accountability, the rule of law, equality and non-discrimination will foster greater confidence in and shared ownership of the peace process and the subsequent political dialogue. This will require greater consultation with, as well as the representation and effective participation of, local communities and civil society. As women have largely been excluded and have not been part of the negotiating teams thus far, this will also require measures to ensure their full participation in all aspects of the process. While assurances have been given to this effect by both the National Ceasefire Coordination Team and the Government, greater progress in this area is needed.

I. Conflict-related and other human rights concerns in ethnic areas

34. The displacement of minorities is one indicator of the degree to which their rights are respected, protected and fulfilled.[24] As of January 2014, there were an estimated 613,600 internally displaced persons in Myanmar: up to 140,000 people in Rakhine State and around 100,000 people in Kachin State. There were also some 200,000 internally displaced persons in the south-east, primarily in Mon, Kayin and Kayah States and Taninthayri Region.[25] A further 120,000 refugees were living in temporary sites along the Thai border — some of whom had been in camps for more than two decades. During her mission, the Special Rapporteur was informed that the conditions were still not conducive to the return of internally displaced persons and refugees, as many still feared for their safety and security and were uncertain about access to land, livelihoods, education and health. While given assurances that returns would be voluntary, on the basis of consultation with those concerned, she reminds the Government that any initiative for return to places of origin must be done with the free, prior and informed consent of those concerned and must involve meaningful consultation with affected individuals and communities, and with humanitarian actors, including the United Nations. The necessary safeguards must be in place to ensure the safety and dignity of those returned, as well as their reintegration into local communities and societies.

35. It has been three years since the resumption of conflict in Kachin and Northern Shan States, and ongoing clashes have resulted in continuing displacement. The Special Rapporteur notes that many internally displaced persons have lived for years in temporary camps. Many with whom she spoke expressed their fervent desire for peace so that they could simply return to their homes. Yet, there was a general fear and concern for their safety and security upon return, with homes and farmland possibly destroyed or riddled with mines. Some noted in particular the lack of access to livelihoods, with many youth turning to drugs. Many were also unaware of developments in the peace process and had been neither informed nor consulted. Thus, greater efforts must be made to inform, involve and consult local communities and/or displaced populations, including about the possibility of return.

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[24] Office of the United Nations High Commissioner for Human Rights (OHCHR), *The Rights of Non-Citizens* (United Nations publication, Sales No. E.07.XIV.2), chap. I.

[25] Office of the United Nations High Commissioner for Refugees (UNHCR), Note on Myanmar, March 2014.

36. In this context, the Special Rapporteur welcomes developments such as the stated intention of the Government to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, the establishment of a Myanmar mine action centre within the Myanmar Peace Centre, and the signing of agreements with international non-governmental organizations (NGOs) for demining programmes. During her mission, she was also informed about the preparation of a national mine action strategy and various mine risk education campaigns conducted in several border States. Yet, significant progress has not been made in the mapping and locating as well as clearance of landmines, and she encourages greater efforts in this regard.

37. Despite improved international humanitarian access to non-government-controlled areas (where roughly half of the 100,000 displaced by the conflict are living in camps or with host families), access remains limited and there are concerns regarding access to adequate food, water and sanitation, health care and education. It is imperative, therefore, that the United Nations and humanitarian actors be provided with more regular and systematic access to areas outside government control.

38. The Special Rapporteur received information about human rights violations committed by both KIA and the military, including attacks against civilian populations. Allegations were also received regarding violations committed by security forces, including the use of torture during interrogation, the sexual abuse and torture of prisoners, the forced labour and torture of civilians perceived to be sympathetic to KIA, and the rape of women and sexual violence in conflict. She also received allegations of the military forcibly disappearing displaced male Kachin. Additionally, she has received allegations of KIA using child soldiers, forced labour and antipersonnel landmines. These allegations are serious and must be addressed as a matter of priority, with perpetrators held to account. All parties to the conflict must do more to ensure respect for international human rights and humanitarian law.

39. The Special Rapporteur commends the Government's stated zero-tolerance policy for any sexual misconduct involving military personnel; however, in addition to allegations of sexual violence in conflict, she also received allegations of rape by the military in Chin and Kayin States. She raised these issues with the authorities, including the specific case of Sumlut Roi Ja, who was allegedly abducted, raped and held by military forces in Kachin State in October 2011. Noting that a bill addressing violence against women is being drafted with support from the United Nations, she was further informed that cases of violence against women were investigated, with action taken against the perpetrators. Records of such actions were not provided, however. The writ of habeas corpus submitted to the Supreme Court by Sumlut Roi Ja's spouse in January 2012 was rejected on the grounds of insufficient evidence.

40. Like the Kachin, the Chin population are predominantly Christians. Previously, the special procedures had sent a joint communication on alleged violations regarding their right to freedom of religion; forced labour for the construction of monasteries and pagodas; forcible confiscation of land; and forcible or coerced conversions. The Special Rapporteur has subsequently heard that forced or coerced conversions continue to be facilitated by the Government Border Areas National Development Training Schools (or Na Ta La schools) and, apart from the Buddhist indoctrination received in these schools, discrimination recurs, as students are

reportedly guaranteed government positions after graduation only if they are Buddhist.[26] Christians reportedly continue to face difficulties in obtaining permits for the construction of churches and for large religious gatherings. Allegations of arbitrary arrest, detention, ill-treatment and torture against church workers, pastors and missionaries are also of concern.

41. Since the signing of a preliminary ceasefire agreement between the Government and the Karen National Union in January 2012, some forms of human rights violations have noticeably declined, while others remain of serious concern, including attacks against civilians by the military, extrajudicial killings, arbitrary arrest and detention, and ill-treatment and torture of civilians suspected of being associated with an ethnic armed group. Allegations of sexual violence, forced recruitment by the military and restrictions on freedom of movement and trade were also present in some Kayin districts. The number of army facilities has also reportedly increased.[27] Furthermore, cases related to forced labour, land-grabbing, environmental destruction and extortion have been reported in Kayin and Mon States.[28]

42. Since the signing in 2012 of the joint action plan for the prevention of recruitment of children and their discharge and rehabilitation, some 364 children and young persons have been released, including 91 on 1 August 2014. While this is to be welcomed, reports suggest that the situation is not improving as quickly as was envisaged. Child recruitment by the military apparently continues, although at a reduced scale. Access for the United Nations country task force to military sites has improved but remains constrained by the 72-hour notice required. The majority of releases are triggered as a result of the International Labour Organization complaints mechanism or complaints made through the country task force hotline service. The Special Rapporteur is, however, not informed of any children who have been verified and released from the Border Guard Forces, which are under the remit of the joint action plan. The practice of the falsification of age documents also apparently continues unchecked. The limited accountability measures adopted so far have not deterred underage recruitment, despite the fact that it is against the law. An incentive-based quota system in the military reportedly continues to drive the demand for fresh recruits and contributes to underage recruitment.

2. Intercommunal violence

43. In Rakhine State, the Special Rapporteur visited two camps for internally displaced persons around Sittwe that had been established following the violence in 2012, where she gained first-hand impressions of the difficult conditions in which both communities live. Many of the displaced have remained in the camps for two years and lack adequate access to basic services and to livelihoods. She found the situation deplorable, but observed that the conditions in the Rohingya camp were undeniably worse. Restrictions on the freedom of movement severely affected basic rights, in particular health services and access to livelihoods, food, water and

[26] Chin Human Rights Organization, "Thematic briefing: the state of freedom of religion or belief for Chin in Burma/Myanmar 2013", 21 January 2014.

[27] Karen Human Rights Group, "Truce or Transition? Trends in human rights abuse and local response in Southeast Myanmar since the 2012 ceasefire", 13 May 2014.

[28] Human Rights Foundation of Mondland-Burma, "In pursuit of justice: reflections on the past and hopes for the future of Burma", 8 July 2014.

sanitation, and education. While the local health authorities have deployed additional medical professionals and provided mobile clinics, the Special Rapporteur received disturbing reports of deaths in camps owing to the lack of access to emergency medical assistance and owing to preventable, chronic or pregnancy-related conditions. With the forced departure of international NGOs providing critical health services and humanitarian organizations not yet operating at full capacity after the attacks on the United Nations and humanitarian organizations in March 2014, there is now limited access and capacity to work with the Government in providing services and to undertake monitoring, including data collection. While Médecins sans frontières was invited back by the Government in July, the memorandum of understanding necessary to resume operations was signed only in September owing to reported community resistance. The severe health situation must be addressed immediately. The Government must meet its obligations to provide adequate services and ensure access and security for those humanitarian organizations that can provide lifesaving assistance.

44. The Special Rapporteur is concerned about the prevalence of inaccurate rumours and false information concerning the conditions of camps, the quality of assistance provided to one community over the other, and the perceived intentions and behaviours of members of different communities, which subsequently become accepted as reality. More must be done to stop this type of misinformation, which serves only to heighten tensions and hostility and to increase the sense of discriminatory treatment. The conditions of both camps and the situation of both communities must be accurately reflected and seen for what they are.

45. The Special Rapporteur recognizes that Rakhine State is one of the poorest in Myanmar and has long suffered from neglect and underdevelopment. She has personally seen how some in the Rakhine Buddhist community live with a lack of facilities and a minimum of basic services. She was made aware of the sense of grievance and perceived discrimination by the Rakhine Buddhist community, which must also be understood and acknowledged and its concerns taken into account when trying to address the underlying causes of the intercommunal violence. The Government should do more to address the long-standing social and economic development challenges in Rakhine State, including through greater cooperation with the international community.

46. Yet, the situation must be seen accurately. By virtue of its lack of legal status, the Rohingya community continues to face systematic discrimination, which includes restrictions on the freedom of movement, on access to land, food, water, education and health care, and on marriages and birth registration. The human rights violations faced by the Rohingya community have been regularly documented by successive Special Rapporteurs on the situation of human rights in Myanmar. These include summary executions, enforced disappearances, torture, forced labour and forced displacements, as well as rape and other forms of sexual violence. These allegations should be investigated and addressed, with perpetrators held to account.

47. The difficult operational environment for international NGOs and the United Nations is also of concern — with continuing reports of threats, intimidation and attacks against staff. Among the Rakhine Buddhist community and even at various levels of government, there is a perception of bias and discrimination in the assistance that has been provided over many years. The Special Rapporteur believes that more must be done to change this perception and that this is a shared

responsibility of all concerned. International organizations should continue to abide by humanitarian principles, and the Government must meet its obligations regarding safety and security, including holding those responsible for the attacks against the premises of the international NGOs and United Nations in March 2014 to account in line with its own public assurances. The Special Rapporteur was informed that 12 persons had been arrested in April 2014 in that regard and that investigations were ongoing, but she has no further details on this.

48. The Special Rapporteur is also concerned about the status of the three international NGO staff who were arrested in connection with the violence in 2012 and remain in detention. She believes that they were arrested under spurious charges and have been denied fair trial and due process rights. She calls for their immediate release.

49. The situation also has regional dimensions: since the violence in June 2012, some 87,000 people (mainly Rohingya, but also some Bangladeshis among them) are estimated to have departed by sea from the Myanmar-Bangladesh border area — often in rickety boats in treacherous conditions, destined for such countries as Australia, Indonesia, Malaysia and Thailand.[29] In fact, UNHCR notes over 20,000 irregular maritime departures in the first half of 2014 alone.

50. Given the many serious concerns, continued engagement by the Government in finding both immediate and long-term solutions is urgently required. Measures aimed at furthering constructive cooperation with the international community will also be key. In discussing possible solutions with the Rakhine State government, the Special Rapporteur was provided a brief overview of the Rakhine State action plan but was not able to actually study the document. While she was informed about institutional and personnel changes and additional service provisions, with the exception of interfaith dialogues, the plan seemed to lack steps to reduce tensions and promote reconciliation between the two communities. She is also concerned that the Government's plan for long-term peaceful coexistence would likely result in a permanent segregation of the two communities.

51. Issues concerning terminology and citizenship are particularly sensitive. The Special Rapporteur was repeatedly reminded not to use the term "Rohingya", as it was not recognized by the Government. In this regard, she notes that the rights of minorities to self-identify on the basis of their national, ethnic, religious and linguistic characteristics is related to the obligation of States to ensure non-discrimination against individuals and groups — a central principle of international human rights law. Various human rights treaty bodies and intergovernmental bodies, including the Committee on the Rights of the Child, the Human Rights Council and the General Assembly, use the term "Rohingya", because this is how that minority group chooses to identify itself, and that choice and self-identity must be respected.

52. The Special Rapporteur was also repeatedly told that citizenship remained the central issue and a possible solution. She was informed about the government-led pilot exercise aimed at verifying the citizenship status of Muslims in a camp for internally displaced persons in Myebon Township. Those participating would have their applications and documents examined to determine eligibility for citizenship under the Citizenship Law of 1982, with the eventual granting of citizenship if approved by a government board. While the final outcome of this process is not yet

[29] UNCHR, "South-East Asia: irregular maritime movements, January-June 2014" August 2014.

known, she was informed that some Rohingya had reportedly participated in the programme voluntarily. Yet, concerns remain about the designation of ethnicity (reportedly "Bengali", "Kaman" or nothing at all) on the forms and a lack of transparency and information about the exercise. Many internally displaced persons are reportedly unclear about and distrustful of the process. In addition, there are no clear timelines provided for each step of the process, including the possible granting of citizenship.

53. In discussing the question of citizenship, the Special Rapporteur was repeatedly reminded that the rule of law in Myanmar should be respected. In this regard, strong opposition was voiced by many against any review or reform of the Citizenship Law of 1982. Yet, laws by nature are forever evolving. As the reform process in Myanmar has demonstrated, laws can and should be amended whenever there are deficiencies and they are not in line with international standards. The Citizenship Law of 1982 is in contravention of international law and Myanmar's obligations as a party to the Convention of the Elimination of All Forms of Discrimination against Women (art. 9) and the Convention on the Rights of the Child (art. 7), as well as the overarching provisions of the Universal Declaration of Human Rights (art. 15); thus it should not be exempt from reform.

54. The Special Rapporteur also visited Mandalay and saw the sites where other recent incidents of communal violence had occurred. She was given detailed information on the actions taken by the Government to quell the violence and address the crimes that had occurred, which contrasted with the information received from civil society actors alleging initial State inaction in stopping the violence and the lack of transparency in the investigations conducted and arrests made. Suggestions were also made that the violence had been deliberately timed by possible organized criminal instigators to destabilize or undermine political activities of the opposition. The Special Rapporteur is not in a position to verify these allegations.

55. At meetings with various interfaith groups and civil society actors, Myanmar's history of religious pluralism and tolerance was repeatedly highlighted. Yet the violence in Mandalay and previously in other parts of the country demonstrate that amicable relations and harmony between different religious and ethnic communities can never be taken for granted. The recurring outbreak of intercommunal violence reveals a growing antagonism against Muslim and other minority communities. In this regard, the Special Rapporteur is encouraged by the efforts of local groups established in Mandalay to proactively combat this trend. She is concerned at the spread of hate speech and incitement to violence, discrimination and hostility in the media and on the Internet, which have fuelled and triggered further violence. More must be done to counter this negative trend. A comprehensive series of measures is needed as a priority, encompassing the review of existing legislation to prohibit and combat hate speech, and, if necessary, the adoption of additional measures — but these must comply with international human rights standards, and be carefully construed and applied by the judiciary so as not to excessively limit the freedom of expression. New legislation or stricter enforcement of existing measures is never a panacea in quelling hate speech, however. There should be an accompanying set of policy measures to address the root causes and underlying grievances, foster dialogue and bring about a change in mindset and discourse. This should include awareness-raising measures, as well as support for intercommunal and interfaith cooperation initiatives. The role of the media and the Press Council is important in

this regard. Additionally, political leaders and public officials have a special responsibility, and in that respect, President Thein Sein's clear and public call against hate speech and incitement in early July is welcomed. Others in positions of influence should also clearly speak out against hate speech. The Government is encouraged to fully utilize the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The Plan of Action sets out various measures to prevent and respond to incidents of incitement to hatred while upholding the rights to freedom of opinion and expression, freedom of religion or belief and other freedoms.

C. Development, economic, social and cultural rights

56. Land rights issues, in particular land-grabbing and land confiscation, as well as forced eviction, remain a major challenge. Cases of land-grabbing, environmental destruction and extortion have been reported throughout the country. The majority of complaints received by the Myanmar National Human Rights Commission relate to land rights, and various parliamentary commissions have been established to address the issue.

57. These are complex issues requiring reforms to the legislative and institutional framework governing land use and management and the management and sharing of resources, as well as land tenure. Currently, the legal framework, specifically article 37 of the Constitution, which provides that the State is the ultimate owner of all lands and natural resources, and section 29 of the Farmland Law, which allows the State to confiscate land on the basis of national interest, combined with the fact that the vast majority of land users have no titles to the land that they occupy and cultivate, leaves people vulnerable to forced evictions and loss of livelihood, with limited access to effective legal remedies.

58. In the light of allegations regarding the excessive use of force by the police, as well as the arbitrary arrest and prosecution of those peacefully protesting forced evictions and land confiscations, a change in the response to public protests on land issues is needed, as well as in the handling of complaints received by various bodies. Priority attention should be given to these issues in accordance with human rights standards, including access to appropriate remedies.

59. The Special Rapporteur was also struck by the information received regarding the impact of large-scale development projects, particularly on vulnerable groups, such as the rural poor, displaced persons and returnees, ethnic communities and children, as well as women in vulnerable situations. It is therefore essential that environmental and social impact assessments always be undertaken and recommendations implemented, that relevant information about development projects be made widely available and accessible, and that the communities concerned be able to participate actively, freely and meaningfully in the assessment and analysis, design and planning, implementation, monitoring and evaluation of such projects.

60. The Special Rapporteur welcomes the approval of Myanmar as an official "candidate" country for the Extractive Industries Transparency Initiative, a global standard for ensuring the transparency of payments related to natural resources. Joining this international group has been a public goal of the Government, in order

to increase transparency in this sector and improve the way in which oil, gas and mineral resources are to be governed.

61. The Special Rapporteur also welcomes the Government's continued commitment to development and the realization of economic, social and cultural rights. She notes progress in this area, including with respect to the health and education sectors, and encourages greater investment in the public service sector generally in order to ensure affordable and accessible health care, education and social security coverage in line with Myanmar's international obligations.

62. The coming years present an opportunity for the Government to proactively manage development and investment processes so as to ensure a rights-based and people-centred form of sustainable development, inclusive growth, poverty reduction and equitable resource-sharing through further reforms to the relevant legislative, institutional and administrative frameworks, as well as a change in mindset and practice. This should be guided by relevant key international standards, including the Guiding Principles on Business and Human Rights and the basic principles and guidelines on development-based evictions and displacement.

D. Rule of law and the administration of justice

63. The current Constitution of Myanmar was adopted following a referendum in 2008. Its adoption was widely criticized for being fundamentally flawed, in terms of both substance and process. Current attempts at constitutional reform present opportunities to address some of these criticisms. It is notable that one of the key priorities reportedly identified from various consultation exercises on this issue was a change to the currently onerous procedure for amending the Constitution.

64. Article 436 provides for the manner in which proposed amendments to the Constitution are to be approved. One study has pointed out that no other constitution in the world has an amendment procedure that requires the approval of more than 75 per cent of the members of both parliamentary chambers or allows for the military to have veto power over constitutional amendments.[30]

65. The previous Special Rapporteur has repeatedly called for the amendment of the Constitution to be in line with international standards (see A/HRC/22/58, A/68/397 and A/HRC/25/64). In order for the military to be subject to the rule of law and to civilian control, amendments must be made to articles 20 (b), 40 (c), 74, 109 (b), 141 (b), 232 (b), 293 (b), 343 (b) and 445. While the majority of these provisions give broad powers and responsibilities to the military, a wide interpretation of article 445 further guarantees that the military can never be held to account for past and present human rights violations. The President in turn has legal immunity for any improper exercise of powers and can be made accountable only through impeachment under article 215.

66. Provisions on fundamental rights are found in chapter VIII of the Constitution, focusing generally on the rights of citizens, although at times there are references to "any person".[31] The rights in chapter VIII are frequently qualified by the phrase

[30] Bingham Centre for the Rule of Law, "Constitutional reform in Myanmar: priorities and prospects for amendment", January 2014.

[31] Many of the human rights accorded to citizens in the Constitution are, under the International Covenant on Civil and Political Rights, accorded to all persons.

"in accordance with law" or similar language, which appears to have the potential to negate part or all of the right in question. The limitations on rights are drawn far too widely in almost all cases and are very vague and subjective.[32] Additionally, article 382 states that "the rights given in this Chapter shall be restricted or revoked through enactment to law" in order for the Defence Forces personnel or members of the armed forces "to carry out peace and security". This goes considerably beyond the limitations permitted by human rights law, as it would appear to allow non-derogable rights to be restricted or revoked in a state of emergency, and possibly in other circumstances.[33] Similarly, some of the duties established in the Constitution are problematic, since they would appear to restrict the rights of individuals on subjective grounds. A possible interpretation of article 383, for example, could mean that anyone who criticizes the Government or government policy or criticizes individuals in the Government or the military could be accused of violating "the duty to uphold (b) non-disintegration of national solidarity". The Constitution is noticeably silent on the prohibition of torture, inhuman or degrading treatment or punishment, as well as the presumption of innocence until proved guilty.

67. While article 11 (a) provides for the separation of powers, the Constitution ensures that much of the power is concentrated within the presidency and, to a large extent, rests with the Commander-in-Chief, who is arguably even more powerful than the President under specific circumstances.[34] Article 19 prescribes the following basic judicial principles: (a) to administer justice independently according to the law; (b) to dispense justice in open court unless otherwise prohibited by the law; and (c) to guarantee in all cases the right of defence and the right of appeal under the law; while article 21 guarantees the right of every citizen to equality, liberty and justice. However, there are continuing claims that access to justice is often denied and persistent allegations of interference in judicial decision-making by the Executive or senior judicial authorities, as well as a high level of corruption in the judiciary.

68. Furthermore, as the Special Rapporteur has been informed, some trials are still conducted behind closed doors, without legal representation or proof or with defective evidence, and pursuant to arbitrary decisions of judges. In addition, defence lawyers face difficulties ranging from not being informed of the dates and venues of the trials to not being allowed to meet the detainees in private in advance of the trials.

69. The Special Rapporteur is concerned at persistent reports of torture during interrogation. She met with two prisoners who had been convicted under the Explosive Substances Act and the Unlawful Associations Act. Both alleged that they had been interrogated continuously for several days and subjected to torture and ill-treatment. While one stated that he had been forced to commit homosexual acts with another male prisoner, both alleged that photographic evidence showing them handling explosives had been fabricated. These cases are similar to information received regarding the arbitrary arrest and torture during interrogation by the military of Kachin men accused of belonging to KIA. She had also received reports of Rohingya detainees, male and female, being tortured and subjected to

[32] Such as the limitations in arts. 354, 365 and 376.

[33] See art. 4, para. 2, of the International Covenant on Civil and Political Rights.

[34] Yash Ghai, "The 2008 Myanmar Constitution: analysis and assessment", 2008.

ill-treatment. While the authorities professed to have no knowledge of these cases or information on the use of torture or ill-treatment during interrogation, the Special Rapporteur believes that these allegations must be promptly, effectively and impartially investigated; responsible law enforcement personnel must be held to account.

70. The Special Rapporteur commends the 15 amnesties granted to prisoners since the establishment of the new Government. She notes that the most recent presidential pardon, of 30 December 2013 (which released more than 41 prisoners), included those convicted under various laws, such as the Peaceful Assembly and Peaceful Procession Act, the Unlawful Associations Act, sections 122, 124 (a) and 505 of the Penal Code, and the Emergency Provisions Act of 1950. However, there are several remaining political prisoners who did not benefit from these amnesties or were recently arrested under the same legislation. The Special Rapporteur raised these cases with the authorities, including that of U Tun Aung and U Kyaw Hla Aung, and called for their review and the release of the prisoners as a matter of priority. The Special Rapporteur also calls upon the authorities to remove the conditions attached to the previous releases and any remaining restrictions placed on those released.

71. In that respect, the Special Rapporteur welcomed information that the prisoner review committee would continue to hold regular monthly meetings. She encourages the Government to continue working with this important body in order to release all remaining political prisoners and to fulfil President Thein Sein's pledge. To that end, she encourages the Government to closely cooperate with civil society in current efforts to develop a definition of "political prisoner".

72. While the scope and pace of the legislative reform process have been encouraging, many concerns remain regarding the lack of consultation on draft laws, with some laws drafted in secret, published at a late stage with little time for comments or with no information on where comments should be submitted. Greater coordination, transparency, consistency and clarity in the process by which laws are reviewed, consulted and drafted is vitally needed. Clear timelines should be given to permit broad consultation on and the proper consideration of draft laws. Additionally, greater efforts should be made to raise awareness of new laws among the general public, beyond their publication in newspapers and journals.

73. The Special Rapporteur is concerned at the current legislative package on the protection of race and religion, which includes four draft bills, on interfaith marriage, religious conversion, polygamy and population control. She is concerned that some of these bills are incompatible with international treaties, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, to which Myanmar is a party. She supports the many calls for the withdrawal of the draft laws on religious conversion and on interfaith marriage.

74. The Special Rapporteur welcomes the adoption and signing of the new Myanmar National Human Rights Commission Law, in April 2014. She hopes for an open, transparent and consultative process in the selection and appointment of the new commissioners leading to a newly constituted body that is independent, effective and pluralistic and representative of the wide spectrum of Myanmar's multi-ethnic community and people. While noting that the law's definition of human rights includes those contained in the Universal Declaration of Human Rights, she

remains concerned at the inclusion of a specific reference to the rights of citizens as enshrined in the Constitution, to the exclusion of non-citizens. She encourages close cooperation with OHCHR and others in developing and strengthening the Commission's capacity to fulfil its important role and duties in line with the Paris Principles.

75. The Special Rapporteur notes with concern that the Constitution and laws of Myanmar consistently provide for most rights to be accorded only to citizens. In international law, only exceptional distinctions can be made between citizens and non-citizens and only if they serve a legitimate State objective and are proportional to the achievement of that objective. The Committee on the Elimination of Racial Discrimination had stated, "[A]lthough some ... rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons".[35] Non-citizens should therefore be accorded, for example, the rights to freedom from arbitrary deprivation of life, torture or cruel, inhuman or degrading treatment or punishment, slavery, arbitrary or unlawful arrest, unfair trial, invasions of privacy, refoulement that may result in torture, forced labour, child labour and violations of humanitarian law. They are also entitled to the right to marry; protection as children; freedom of expression, peaceful association and assembly; equality; freedom of religion and belief; social, cultural and economic rights; labour rights; and consular protection. In particular, States should take effective measures to ensure that all non-citizens enjoy the right to acquire citizenship without discrimination.[36]

V. Conclusions

76. **Myanmar is undergoing an important transition, and the far-reaching reforms have dramatically transformed the political, economic, social and human rights landscape in the three years since the establishment of the new Government. This must be recognized and commended. Yet, there are signs of possible backtracking, which, if not addressed, could undermine Myanmar's efforts to take its rightful place as a member of the international community that respects and protects human rights. Thus, human rights should be fully mainstreamed into Myanmar's institutional, legal and policy framework, and a culture of respect of human rights must be engendered among all State institutions and the public at large. Myanmar needs further encouragement and understanding in order to address these challenges and continue on the path of reform. It also needs the continued engagement of the international community, including through policy dialogue, concrete programmes and practical action. The Special Rapporteur's observations and recommendations will, it is to be hoped, be taken in this spirit and contribute to the efforts Myanmar has undertaken in its path towards respecting, protecting and promoting human rights and achieving democratization, national reconciliation and development.**

[35] Committee on the Elimination of Racial Discrimination general recommendation No. 30 (2004) on discrimination against non-citizens, para. 3.

[36] OHCHR, see note 24 above, chaps. I and II.B.

VI. Recommendations

77. **The following recommendations are in line with the Special Rapporteur's preliminary key areas of focus.**

78. **To ensure that elections are transparent, inclusive, participatory, free and fair, the Government should implement an electoral framework and process in line with international standards, with guarantees for the rights to freedom of expression and opinion and of assembly and association; and amend relevant laws and regulations affecting the rights to vote, campaign and stand for elections, ensuring no discrimination between different citizenship categories and using objective and reasonable criteria for candidates running for public office.**

79. **To ensure an enabling environment for civil society and the freedoms of expression, assembly and association, the Government should:**

(a) **Promptly investigate and redress threats, acts of intimidation and harassment against media and civil society actors;**

(b) **Cease the arbitrary arrests and detention as well as disproportionate sentences against civil society actors, farmers and other human rights defenders and activists as well as media professionals;**

(c) **Resolve disputes relating to the media through the Interim Press Council;**

(d) **Review and further amend the Peaceful Assembly and Peaceful Procession Act and revise the draft Law relating to Registration of Organizations in line with international norms and standards;**

(e) **Immediately and unconditionally release all political prisoners and those arbitrarily detained, including U Tun Aung and U Kyaw Hla Aung, ensuring that they are not subject to conditions that make it difficult for them to find work, receive benefits and reintegrate into society.**

80. **Ending discrimination against and ensuring the protection of the rights of minorities is essential for national reconciliation. This includes ensuring respect for the freedom of religion or belief and the enjoyment of cultural rights.**

81. **Regarding conflict-related and other human rights concerns in ethnic areas, the Government should:**

(a) **Ensure greater consultation with and the full and effective participation of civil society, women and affected communities, notably representatives of internally displaced persons and refugees, in the peace process and any subsequent political dialogue;**

(b) **Ensure that any national ceasefire agreement and future peace processes include monitoring aimed at the protection of human rights;**

(c) **Establish a national process and mechanism for internally displaced persons/refugee returns, ensuring close cooperation and meaningful consultation with all relevant stakeholders so that initiatives for return to places of origin are carried out with their free, prior and informed consent and ensure their safety and dignity and their reintegration into local communities;**

(d) Ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; and finalize the national mine action strategy in full consultation with concerned stakeholders and with the assistance of the international community;

(e) Promptly investigate and prosecute alleged human rights violations committed by the military and other armed groups; and make information on cases and outcomes publicly available;

(f) Investigate all allegations of the recruitment or use of child soldiers; continue and intensify the implementation of existing action plans, including the release of child soldiers and their reintegration; and ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

82. **Regarding Rakhine State, the Government should:**

(a) Immediately address the critical health situation in camps for internally displaced person and isolated locations, in particular for those comparatively underserved, namely, the Rohingya, including by increasing the authorities' capacity to provide adequate health services;

(b) Provide adequate basic services, including in camps for internally displaced persons, and remove any restrictions against the Rohingya on freedom of movement and other rights so as to ensure access to livelihoods, food, water and sanitation, and education;

(c) Investigate and prosecute those responsible for human rights violations perpetrated against the Rohingya community;

(d) Respect the Rohingyas' as well as other minorities' right to self-identification in compliance with international human rights standards, including by refraining from directing international actors to adopt positions that run counter to such standards;

(e) Immediately release the international NGO staff members imprisoned in connection with the violence of June 2012;

(f) Address the long-standing social and economic development challenges in Rakhine State through a human-rights-based approach, ensuring the participation of affected communities, including through greater cooperation with the international community;

(g) Develop reconciliation measures as a necessary step to rebuild integrated communities for inclusion in the Rakhine State Action Plan.

83. **More broadly, the Government should utilize the Rabat Plan of Action to develop a holistic set of measures to address the root causes of discrimination against racial and religious minorities, as well as intercommunal tensions and violence, and prevent and respond to incidents of incitement to hatred while upholding internationally recognized human rights.**

84. **To ensure a rights-based and people-centred form of sustainable development and the protection of economic, social and cultural rights, the Government should:**

(a) **Ensure that environmental and social impact assessments of large-scale development projects are always undertaken, implement their recommendations and make all relevant information publicly accessible;**

(b) **Undertake further reforms of legislation and institutional frameworks governing land use and management, resource management and -sharing, and land tenure, in line with international standards.**

85. **In order to strengthen the rule of law, the Government and Parliament should:**

(a) **Continue to review and revise legislation to be in compliance with international human rights standards;**

(b) **Establish a national legislative reform process with clear timelines and greater coordination, transparency, consistency and clarity in the review, consultation and drafting of laws;**

(c) **Ensure greater involvement by civil society and relevant stakeholders in the development of legislation, including through inclusive public consultation processes; and develop greater awareness-raising measures for draft and newly promulgated laws.**

86. **In addition, Parliament should amend the Constitution to ensure that human rights are appropriately accorded to all persons in Myanmar, provide for the prohibition of torture, inhuman or degrading treatment or punishment and the presumption of innocence until proven guilty, and ensure that the military is subject to civilian rule and to the rule of law.**

87. **The Government should further:**

(a) **Effectively and promptly investigate allegations of torture and ill-treatment in detention; and ensure respect for the rights of those accused, including due process and fair trial rights;**

(b) **Expedite the ratification of the Convention against Torture and the Optional Protocol thereto;**

(c) **Ensure that no individual who cooperates with the United Nations suffers reprisals and that any allegations are promptly investigated and redress is provided;**

(d) **Engage closely with the human rights system, including the treaty bodies, the universal periodic review and thematic special procedures;**

(e) **Expedite the establishment of an OHCHR office in Myanmar with a full mandate.**

88. **The international community should remain constructively and critically engaged on the human rights situation and support Myanmar, including through policy dialogue and technical assistance, in further reforms that fulfil its human rights obligations.**